

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
RNK, Inc. d/b/a RNK Telecom,)	
Nuvio Corporation,)	
Unipoint Enhanced Services d/b/a PointOne,)	CC Docket No. 99-200
Dialpad Communications, Inc.,)	
Vonage Holdings Corporation, and)	
VoEX, Inc.)	
)	
Petitions for Limited Waiver of)	
Section 52.15(g)(2)(i) of the Commission's Rules)	
Regarding Access to Numbering Resources)	

REPLY COMMENTS OF SBC INTERNET SERVICES, INC.

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TABLE OF CONTENTS

I.	INTRODUCTION AND SUMMARY.....	1
II.	DISCUSSION.....	1
A.	The Commission Should Not Address Non-Numbering Issues in this Waiver Proceeding.....	1
B.	The Commission Should Not Adopt a Blanket Prohibition Against VoIP Providers Obtaining Numbering Resources in Rate Centers Where Number Pooling Is Not Yet Available	7
C.	The Commission Should Only Grant Waivers to Those VoIP Petitioners Who Intend to Use Numbering Resources in Connection with the Provision of Information Services.....	9
II.	CONCLUSION.....	11

I. INTRODUCTION AND SUMMARY

SBC Internet Services, Inc. (SBCIS) submits the following reply comments in response to the petitions filed by Dialpad, Nuvio, PointOne, RNK, VoEX, and Vonage (collectively, the VoIP Petitioners)¹ seeking waivers of section 52.15(g)(2)(i) of the Commission's rules to obtain direct access to numbering resources from the North American Numbering Plan Administrator (NANPA) and/or the Pooling Administrator (PA).² In ruling on the VoIP Petitioner's waiver requests, SBCIS encourages the Commission to focus its attention on the numbering-related issues relevant to this proceeding and defer consideration of non-numbering issues to other appropriate proceedings. When addressing the relevant numbering-related issues, SBCIS further urges the Commission to ensure that all waiver recipients are subject to the same numbering obligations and that those obligations are crafted in a manner that will foster the deployment of innovative new services while promoting the efficient use of numbering resources.

II. DISCUSSION

A. The Commission Should Not Address Non-Numbering Issues in this Waiver Proceeding.

In granting SBCIS's waiver request, the Commission concluded that it was not necessary to condition the waiver on compliance with requirements unrelated to the administration of

¹ *Wireline Competition Bureau Seeks Comment on RNK, Inc. d/b/a RNK Telecom, Nuvio Corporation, Unipoint Enhanced Service d/b/a PointOne, Dialpad Communications, Inc., Vonage Holdings Corporation, and VoEX, Inc. Petitions for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Access to Numbering Resources*, CC Docket No. 99-200, Public Notice, DA 05-663 (March 11, 2005).

² Section 52.15(g)(2)(i) of the Commission's rules currently requires that an applicant for numbering resources demonstrate that it is authorized to provide service in the area for which the numbering resources are being requested. 47 C.F.R. § 52.15(g)(2)(i). In the wireline context, the Commission has interpreted this rule as requiring state certification. *See Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 7574, 7613 ¶ 97 (2000). Because VoIP providers are usually not state certificated common carriers, they would need a waiver of section 52.15(g)(2)(i) to obtain direct access to numbering resources.

numbering resources.³ Instead, the Commission decided that it would be more appropriate to address “other obligations not relevant to this waiver” in other proceedings, including the *IP-Enabled Services NPRM*.⁴ Despite this sensible decision, some commenters want the Commission to use the instant waiver proceeding as a vehicle to create new regulatory obligations for VoIP providers that are unrelated to numbering administration. As discussed below, the Commission should reject these requests and should instead address the non-numbering regulatory obligations of VoIP providers in the *IP-Enabled Services NPRM* and other appropriate proceedings.

Licensing Requirements. The Michigan Commission urges this Commission to adopt “a process for federal licensure for providers of emerging interstate technologies.”⁵ The Michigan Commission claims that such a licensing requirement is necessary because: “[t]o allow any company to request and receive telephone numbering resources without meeting specific criteria, will only encourage additional requests for waivers.”⁶ According to the Michigan Commission, “[t]here must be a standard, a burden of responsibility, to ensure that providers of emerging technology are cognizant of the magnitude of their request.”⁷

The Michigan Commission appears to be conflating two separate issues: (1) the standard for granting a waiver; and (2) the imposition of a federal licensing requirement for VoIP providers. As to the first issue, contrary to the Michigan Commission’s assertions, a VoIP

³ *Administration of the North American Numbering Plan*, CC Docket No. 99-200, Order, FCC 05-20, ¶ 9 (released Feb. 1, 2005) (*SBCIS Numbering Waiver Order*) (“We do not find it necessary, however, to condition SBCIS’ waiver on compliance with requirements other than numbering requirements.”).

⁴ *SBCIS Numbering Waiver Order* ¶ 9.

⁵ Michigan Comments at 3.

⁶ Michigan Comments at 2.

⁷ Michigan Comments at 3.

provider seeking direct access to numbering resources today *already* has an obligation to meet “specific criteria” before obtaining those resources. The criteria are embodied in the well-known “good cause” standard for granting a waiver of this Commission’s rules.⁸ Indeed, SBCIS was required to demonstrate “good cause” before it obtained direct access to numbering resources and the current crop of VoIP Petitioners, as well as any future petitioners, are also required to demonstrate “good cause” before obtaining such resources pursuant to a waiver.

Regarding the second issue (federal licensing requirements for VoIP providers), this Commission is already seeking comment in the *IP-Enabled Services NPRM* on whether a federal authorization requirement would be appropriate for VoIP providers.⁹ Accordingly, consistent with the Commission’s decision to address non-numbering issues in other appropriate proceedings,¹⁰ the Commission should reject the Michigan Commission’s request to create a new federal licensing scheme for VoIP providers in the context of this waiver proceeding.

The Commission should also reject similar, though slightly more subtle, attempts by other state commissions to create new market entry conditions for VoIP providers in this proceeding. For example, the Nebraska Commission urges this Commission to create a new requirement for VoIP providers to supply a variety of numbering-related information to state commissions before requesting numbering resources from NANPA or the PA pursuant to a waiver.¹¹ The Nebraska Commission attempts to downplay the significance of its request,

⁸ See 47 C.F.R. § 1.3 (“Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefore is shown.”); *SBCIS Numbering Waiver Order* ¶ 2 (“The standard of review for waiver of the Commission’s rules is well settled.”).

⁹ *IP-Enabled Services NPRM* ¶ 72.

¹⁰ *SBCIS Numbering Waiver Order* ¶ 9.

¹¹ Nebraska Comments at 7 (“The notice to the state commission should include *at a minimum* the following information: 1) the VoIP provider’s full name and contact information, 2) a description of where the numbers will

claiming that “these requirements will ensure that state commissions and consumers are informed about numbering resources being used in their respective states, and will assist states in conservation planning.”¹²

But the Nebraska Commission fails to acknowledge that it *already* has access to this information today. Indeed, under current rules, a VoIP provider seeking direct access to numbering resources will need to file a waiver petition with this Commission, which will typically be put out for public comment under standard Commission practice, thereby giving *all* state commissions advance notice of the VoIP provider’s intentions. Assuming the Commission grants the waiver, it will typically do so in a publicly available order (usually issued several months after the public notice), again giving *all* state commissions advance notice that a VoIP provider will be obtaining direct access to numbering resources. When the VoIP provider subsequently makes a request to NANPA and/or the PA for numbering resources, it will be required to submit standardized application(s) for those resources, which contain a variety of information, including the VoIP provider’s name, address, and contact information, as well as a description of the numbering resources requested, the desired effective date for those resources, and an explanation of how the VoIP provider has satisfied a variety of its numbering obligations (e.g., the facilities readiness requirement).¹³ Under Commission rules, *all of this information is freely available to the relevant state commission that wants to review it.*¹⁴ In addition, a VoIP provider obtaining direct access to numbering resources would also need to periodically file

be used, 3) the projected service commencement date, 4) whether a switch is being installed, and 5) how many numbers are being requested.”) (emphasis in original).

¹² Nebraska Comments at 7.

¹³ See 47 C.F.R. § 52.15(g).

¹⁴ See 47 C.F.R. § 52.15(g)(5) (“State regulatory commissions shall have access to service provider’s applications for numbering resources.”).

Numbering Resource Utilization and Forecast (NRUF) reports, which are used by NANPA, the PA, this Commission and state commissions to monitor numbering resource utilization trends and plan for future numbering needs.¹⁵ Under Commission rules, these reports are available to the relevant state commissions that want to review them.¹⁶ Thus, contrary to the claims of the Nebraska Commission, there is no valid reason to create a new and *entirely redundant* set of procedures applicable to VoIP providers in order to supply numbering information to state commissions. Accordingly, this Commission should reject the Nebraska Commission's request.¹⁷

911 Requirements. SBCIS fully recognizes the public interest imperative of providing VoIP customers with access to 911 service and we support efforts by the communications industry and the public safety community to develop 911 solutions for VoIP services. Indeed, the Texas 911 Alliance has acknowledged SBCIS's work in this regard and has observed that "SBCIS's VoIP services will be provided in compliance with E911 responsibilities and requirements."¹⁸

While SBCIS will continue to work closely with the public safety community on 911 issues affecting VoIP in the future, we must respectfully disagree with the Texas 911 Alliance and the Nebraska Commission, who suggest that the provision of 911 service is, or should be, a mandatory requirement for a VoIP provider to obtain direct access to numbering resources

¹⁵ See 47 C.F.R. § 52.15(f).

¹⁶ See 47 C.F.R. § 52.15(f)(7).

¹⁷ The Maine Commission suggests that VoIP providers "provide the relevant state commission with both regulatory and numbering contacts (name, phone number, and e-mail) at the time they first request numbering resources in a particular state." Maine Comments at 3. SBCIS believes this limited request for contact information is not unreasonable and, to the extent this Commission wishes to maintain the "notice requirement" in the *SBCIS Numbering Waiver Order* on a going forward basis, SBCIS urges the Commission to limit that notice requirement to the contact information requested by the Maine Commission. See SBCIS Comments at 5-6.

¹⁸ Texas 911 Alliance Comments at 3.

pursuant to a waiver from this Commission. Specifically, the Texas 911 Alliance suggests that the provision of 911 service is an existing condition of the *SBCIS Numbering Waiver Order*.¹⁹ In addition, the Texas 911 Alliance and the Nebraska Commission, assert that the provision of 911 service should be a condition, on a going forward basis, for VoIP providers seeking a waiver of the Commission's rules to obtain direct access to numbering resources.²⁰ Neither of these claims, however, has merit.

As the Commission recognized in the *IP-Enabled Services NPRM*, the provision of 911 service in an IP environment raises many technical, legal and economic issues that are best addressed through a uniform, national inquiry conducted at the federal level.²¹ Indeed, in the *Vonage Order*, the Commission expressly preempted states from imposing 911 requirements on VoIP providers as a condition of market entry and stated that it intended to address 911 issues for VoIP "as soon as possible" in the *IP-Enabled Services* docket.²² Further, in the *SBCIS Numbering Waiver Order*, the Commission concluded that it was unnecessary to condition SBCIS's waiver on compliance with non-numbering requirements (which would include 911 requirements) and that other regulatory obligations would be better addressed in other proceedings, "including the *IP-Enabled Services* proceeding."²³ Even the National Emergency Number Association (NENA) acknowledges that it may not be necessary to condition numbering waivers on the provision of 911 capability, so long as the waiver recipients comply with any 911

¹⁹ Texas 911 Alliance Comments at 3 n.5 (suggesting that the *SBCIS Numbering Waiver Order* grafted a 911 obligation onto the "facilities readiness" requirement in the Commission's numbering rules.).

²⁰ Texas 911 Alliance Comments at 2-5; Nebraska Comments at 6.

²¹ *IP-Enabled Services NPRM* ¶¶ 50-57.

²² *Vonage Holdings Corporation Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, WC Docket No. 03-211, Memorandum Opinion and Order, 19 FCC Rcd 22,404 ¶¶ 42, 44 (2004) (*Vonage Order*).

²³ *SBCIS Numbering Waiver Order* ¶ 9.

requirements ultimately adopted in the *IP-Enabled Services* proceeding.²⁴ Thus, contrary to suggestions by the Texas 911 Alliance, the provision of 911 service was *not* a condition of the *SBCIS Numbering Waiver Order*. And, contrary to the suggestions of the Texas 911 Alliance and the Nebraska Commission, it would be inappropriate to condition numbering waivers on the provision of 911 service before this Commission has addressed the 911 issues surrounding VoIP in the *IP-Enabled Services* proceeding.

Nonetheless, as the Commission observed in the *Vonage Order*, it is reasonable to expect that VoIP providers will continue to work collaboratively with the public safety community and other stakeholders to develop 911 solutions during the pendency of the *IP-Enabled Services NPRM*.²⁵ Indeed, even in the absence of an explicit requirement to do so, SBCIS reached out to the public safety community to develop 911 solutions for its VoIP services,²⁶ and we reiterate our commitment to continue work with the public safety community and other stakeholders in the future.

B. The Commission Should Not Adopt a Blanket Prohibition Against VoIP Providers Obtaining Numbering Resources in Rate Centers Where Number Pooling Is Not Yet Available.

The Iowa Commission, as it previously did in comments opposing SBCIS's original waiver petition, again raises concerns that VoIP providers operating under waivers could request numbering resources in rate centers where number pooling is not available, thus necessitating the assignment of a block of 10,000 numbers to the VoIP provider, rather than a block of only 1,000

²⁴ NENA Comments at 1-3.

²⁵ *Vonage Order* ¶ 43 (“We fully expect Vonage to continue its 911 development efforts and to continue to offer some type of public safety capability during the pendency of our *IP-Enabled Services Proceeding*.”).

²⁶ See Texas 911 Alliance Comments at 3 (“SBCIS’s VoIP services will be provided in compliance with E9-1-1 responsibilities and requirements.”). See also NENA Comments at 2 n.3.

numbers if pooling were available.²⁷ According to the Iowa Commission, VoIP providers could, in theory, seek numbering resources in *all* 816 rate centers in Iowa, including the 396 rate centers where pooling is not yet available, thereby creating significant number exhaust problems.²⁸

The Iowa Commission's concerns, however, are greatly overstated. At this early stage of VoIP deployment, it is highly unlikely that VoIP providers will rush *en masse* to immediately target every single rate center in Iowa, including the typically smaller, rural rate centers where pooling is not yet available. Indeed, even the Iowa Commission acknowledges that "some may question the likelihood of this scenario occurring."²⁹

Moreover, under this Commission's facilities readiness requirement, a VoIP provider seeking numbering resources must show that it "is or will be capable of providing service within sixty (60) days of the numbering resources activation date."³⁰ Pursuant to Commission orders and industry procedures, an applicant can make this showing through a variety of evidence, such as an executed interconnection agreement with a LEC; a business plan to provide service in the area where numbering resources are sought; network planning documents demonstrating that equipment has been purchased and is, or will be, operational; a confirmation letter from the

²⁷ Iowa Comments at 2-3. *See also* Maine Comments at 4-5. The Maine Commission and the Ohio Commission also raise questions about whether VoIP providers will comply with this Commission's requirements regarding geographic portability of telephone numbers. Maine Comments at 3; Ohio Comments, Attachment at 3-4. Without expressing an opinion on the accuracy of how the Maine Commission or the Ohio Commission have characterized this Commission's numbering requirements, SBCIS reiterates its intention to comply with all Commission numbering resource requirements. *See* SBCIS Reply Comments, CC Docket No. 99-200, at 15 n.48 (filed Aug. 31, 2004).

²⁸ Iowa Comments at 2.

²⁹ Iowa Comments at 2.

³⁰ 47 C.F.R. § 52.15(g)(2)(ii).

entity with which the applicant will interconnect; or other similar evidence.³¹ In light of this requirement, a VoIP provider (or any other applicant) must make a significant commitment in terms of time and network deployment before requesting numbering resources. Thus, to the extent a VoIP provider does ultimately seek numbering resources in a non-pooling rate center, it will likely be doing so in response to a significant level of customer demand for its VoIP services that would justify the effort needed to meet the facilities readiness test.

By imposing a blanket prohibition on VoIP providers obtaining numbering resources in non-pooling rate centers, the Commission would prevent VoIP providers from meeting this demand and from offering customers the innovative new services they desire. A far more preferable approach (and one that SBCIS has already committed to) would be for VoIP providers to work with the relevant state commissions on a case-by-case basis to minimize any number utilization concerns that may arise if a VoIP provider needs numbering resources in a non-pooling rate center.³² Under this approach, the Commission can remain faithful to its statutory duty to “encourage the provision of new technologies and services to the public,”³³ while ensuring that state number conservation concerns are appropriately addressed.

C. The Commission Should Only Grant Waivers to Those VoIP Petitioners Who Intend to Use Numbering Resources in Connection with the Provision of Information Services.

In its comments, Qwest has raised concerns that at least one VoIP Petitioner is seeking a

³¹ See *Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd at 7615 ¶ 97 (2000); NANPA Fact Sheet “Effects of the FCC’s NRO Order on Code Administration, Updated 06/15/2004,” at http://www.nanpa.com/pdf/nro_effects.pdf.

³² See SBCIS Reply Comments, CC Docket No. 99-200, at 14 n.46 (filed Aug. 31, 2004).

³³ 47 U.S.C. § 157.

waiver for illegitimate purposes.³⁴ Specifically, Qwest alleges that PointOne may be pursuing a waiver of the state certification requirement to obtain direct access to numbering resources to be used in connection with telecommunications services, rather than information services. Qwest notes that PointOne is an self-acknowledged provider of IP-in-the-middle services, which the Commission has declared to be telecommunications services,³⁵ and PointOne has failed to identify any actual information services that it provides. Thus, Qwest claims that PointOne is not similarly situated with SBCIS or other VoIP providers who offer information services, and the Commission should deny PointOne's waiver petition.

While SBCIS will reserve judgment on PointOne's fitness to obtain a waiver pending a further explanation from PointOne in its reply comments, we urge the Commission to ensure that no party games the waiver process to unscrupulously avoid its lawful obligations under the Commission's rules. The Commission must not allow a common carrier offering solely telecommunications services to masquerade as an information service provider in order to obtain a waiver and evade the state certification process that is normally a prerequisite for common carriers to obtain numbering resources. Such a result would undermine the integrity of the Commission's waiver process and would confer an unfair advantage on the petitioning common carrier. Accordingly, the Commission should only grant numbering waivers to those petitioners who intend to use their numbering resources to provide information services.

³⁴ Qwest Comments at 1-7.

³⁵ See *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, Order, 19 FCC Rcd 7457 (2004).

III. CONCLUSION

Subject to all of the foregoing arguments, SBCIS supports the VoIP Petitioners' waiver requests to obtain direct access to numbering resources from NANPA and/or the PA.

Respectfully Submitted,

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